FILED
OCT - 8 1952
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

October Term 1952

No. 299

ARTHUR P. JACOBY,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF NEW YORK.

Brief of Respondent in Opposition to Petition for Writ of Certiorari.

ROBERT O. CAMPBELL,
Counsel in this Court,
Bath, N. Y.

and

HARRY K. MORTON,
District Attorney,
Hornell, N. Y.

Counsel for Respondent

Index

Opinion Below 1
Jurisdiction Statement 1
Statement 2
Argument 3

CITATIONS

Ford vs. United States, 47 S. Ct. 531, 273 U. S. 593.
Dowdell vs. United States 31 S. Ct. 590, 221 U. S. 325

In the

Supreme Court of the United States

October Term 1952

No. 299

Arthur P. Jacoby,
Petitioner,

vs.

The People of the State of New York,
Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Opinion Below

The opinion of the Court of Appeals of the State of New York, in the case is reported in volume 304 New York Reports at page 33.

Jurisdiction

This minor charge practically amounting to disorderly conduct was completed in the City Court of Corning. One appeal as a matter of right exists which was decided by affirming the conviction as shown by the opinion of the acting County Judge shown on pages 15, 16, 17, 18 and 19 of the record herein. A New York State Supreme Court Judge sitting in the Appellate Division of that Court granted a Certificate for the review of questions of law to the Court of Appeals. A writ of Certiorari is apparently being

asked herein by the defendant for a review of the decision of the Court of Appeals, the State Court of last resort, which affirmed the conviction of the defendant.

This would be a second review, in addition to the review on appeal, of the judgment of conviction of the City Court of Corning.

Statement

Two young women made verbal complaint to the Police Department of the City of Corning that a young man driving a car on which was a Missouri license plate had stopped his car in front of them, opened the door, then opened the front of his pants and exhibited his privates to them. Shortly thereafter two other girls in the same city complained to the police that a young man came up on the street behind them, seemingly put a gun in the back of one, stated this is a holdup and tried to snatch her handbag. Both girls ran but looked back and gave the same description of their assailant as had the other young women, also seeing him leave in the car with the Missouri license plates.

At the instance of the Chief of Police of Corning a news item appeared in the local newspapers stating the police were looking for a young man with a car with a Missouri license plate.

Soon thereafter the defendant with whom the Chief was well acquainted by reason of attending the same church, came to the police station saying he saw the notice in the newspaper and had Missouri plates on his car. The Chief told him of the two complaints and the defendant reluctantly stated he had no gun and meant no harm but that he was the offender. The Chief then gave the defendant paper and

a typewriter, asked him to write out his confession, helped him start it in their usual form, and left the defendant alone to finish it.

The defendant wrote his statement printed on pages 8 and 9 of the record, which statement was then completed, subscribed and sworn to by him.

After some discussion the defendant called his father and their minister. The City Court Judge and City Attorney were called and after talking over the matter for about an hour as shown in the last paragraph on page 7 of the record, a general charge was agreed upon.

The defendant was advised of his legal and lawful rights, plead guilty to the charge of violation of Section 43 of the Penal Law of the State of New York as agreed upon, and sentence was imposed.

The charge is not a felony which would have required consideration by a Grand Jury and proceeding by indictment but is a misdemeanor of which the City Court of Corning has complete jurisdiction. Children's Court in New York State handles cases involving boys and girls to the age of sixteen years. Then up to age nineteen they may be treated as youthful offenders. This defendant had passed his nineteenth birthday and was attending college in Missouri although his home was in Corning, New York.

Argument

The application for the Writ is not well founded. No Federal question of substance not heretofore determined by this Court, has been decided by a State Court in this action.

The varying processes of states practices, or the judgment of the City Court of the City of Corning, New York, are not proper subjects for review by this Court under a Writ of Certiorari.

The law under which defendant was convicted is adequate and was substantially complied with. No warrant to bring the defendant into court was needed in this instance, or was required. Therefore, there was no need or requirement that the provision of Chapter 11, entitled "The Warrant of Arrest", a part of the Code of Criminal Procedure of the State of New York, be complied with.

The defendant voluntarily appeared and submitted himself to the jurisdiction of the Court. This Court and apparently all other courts approve of such voluntary appearance. Therefore the provisions of Chapter 111 dealing with arrest with a warrant and Chapter IV of said Code dealing with arrest without a warrant, have no application.

Then the proceedings under Part V of said Code provide the procedure when a defendant appears or is brought before a justice of the peace or such City Court: Section 699 provides,

> 1. In the cases in which the courts of special sessions or police courts have jurisdiction when the defendant is brought before the magistrate, the magistrate must immediately inform him of the charge against him and of his right to the aid of counsel in every stage of the proceedings, and before any further proceedings are had.

The defendant wrote a confession stating he had let down his pants before two girls playing tennis on the campus of the Northside High School and pretended he was staging a holdup of two girls on the street. Page 9 of the Record.

The officers, the defendant, his father and minister talked over the various provisions of law and agreed the charge would be a violation of the provisions of the Penal Law (page 7 of the Record) reading as follows:

> Section 43. A person who wilfully and wrongfully commits any act which seriously injures the person or property of another, or which seriously disturbs or endangers the public peace or health, or which openly outrages public decency, for which no other punishment is expressly prescribed by this chapter, is guilty of a misdemeanor; but nothing in this chapter contained shall be so construed as to prevent any person from demanding an increase of wages, or from assembling and using all lawful means to induce employers to pay such wages to all persons employed by them, as shall be a just and fair compensation for services rendered.

The defendant was fully informed of his rights to the aid of counsel and to a trial. Page 8 of the Record.

The Defendant was duly, legally proceeded against. Jurisdiction of the person was complete by the defendant voluntarily appearing and submitting himself to the jurisdiction of the Court.

Jurisdiction of the subject matter was complete in the Court by the filing of the written confession or statement of the defendant and its concurrance with the provisions of

Section 43 of the Penal Law, of which section the City Court of Corning properly took cognizance.

The formal requirements of the controlling legal procedure were substantially complied with by the defendant being advised of the charge against him, of his right to counsel and of a trial.

The plea of guilty by the defendant completed the requirements for his conviction and the judgment was justified.

A plea of guilty is a substantial matter never given lightly by a defendant. Particularly when he is before a Judge, in Court, and is confronted with a charge and law which can inflict and enforce a penalty.

Certainly a voluntary appearance is necessarily and rightly given legal cognizance. A guilty man should never be precluded by procedural requirements from voluntarily appearing, or from confessing his guilt if it will help his conscience, and clear an otherwise unsolved crime which keeps people in fear, and then being justly dealt with by law.

No question existed as to the charge against the defendant. The statement made by him coupled with spending an hour selecting the section of the law applicable clearly is considerable more consideration than the usual defendant receives or than is required to make up the charge against him. Actually the charge is a provision of law coupled with a formal accusation of its violation by the defendant. In a simplified indictment such formal accusation amounts only to a statement of the time and place of the alleged violation with the name of the crime charged. The name specifies a provision of law.

The information. The defendant joined in the selection of the charge against him and accepted the consideration shown to him. Now, he claims an information was necessary. It is elementary that the purpose of an information is to obtain the issuance of a warrant to bring the defendant before the court, or actually to obtain jurisdiction of his person.

Whether this defendant, by appearing, waived the issuance of a warrant based upon an information, or whether by submitting to the jurisdiction of the court in the first instance, all usual preliminaries were dispensed with, does not seem necessary to be decided here. In this particular action he either waived or such was regularly dispensed with, or probably in this case, both.

It is of course due as a matter of legal right that no one be restrained and deprived of liberty by arrest except upon sworn information. Except in certain instances at the scene of the crime. The information, supporting deposition, warrant and arrest are practically a proceeding by themselves usually terminating by the giving of bail. Sometimes the sufficiency of the information for the deprivation of liberty is questioned. Jurisdiction of the person is obtained and held by bail, and in felony cases the real charge against the defendant comes later on and is made by a Grand Jury which may change the existing alleged charge as it deems proper.

Presently the practice is growing where a lawyer produces his client in court without an arrest and submits to jurisdiction. Can he later complain that no information was laid or the usual preliminaries not followed?

The information cannot be considered the charge against the defendant. The provision of the law claimed to be applicable, to have been violated, is the matter of substance. Some person's accusing finger has not the dignity of a legal accusation of the violation of a provision of the law of the land.

Ford vs. United States, 47 S. Ct. 531, 273 U. S. 593. "A plea to the jurisdiction must precede the plea of not guilty. Such a plea was not filed. The effect of the failure to file it was to waive the question of the jurisdiction of the persons of defendants." citations follow

Dowdell vs. U. S., 31 S. Ct. 590, 221 U. S. 325. Objection to the want of proper arrest, proper information etc. must be taken before pleading the general issue.

It is respectfully urged that this defendant was treated with consideration, that the legal requirements were complied with from a practical point of view and no basis exists for the granting of the writ asked by him.

Dated: September 25, 1952.

Respectfully submitted,

ROBERT O. CAMPBELL,
Counsel in this Court
Bath, New York
and
HARRY K. MORTON,
District Attorney,
Hornell, New York.